[Editor's note: this case was reported earlier via [2002] 2 CLJ 57 based upon the judgment of Haidar Mohd Noor FCJ which represented the judgment of the court. The judgment of Denis Ong Jiew Fook JCA was received subsequently on 29 May 2002; hence this report.]

DYTM TENGKU IDRIS SHAH IBNI SULTAN SALAHUDDIN ABDUL AZIZ SHAH

v.

DIKIM HOLDINGS SDN BHD & ANOR

FEDERAL COURT, KUALA LUMPUR
AHMAD FAIRUZ CJ (MALAYA)
HAIDAR MOHD NOOR FCJ
DENIS ONG JCA
[SPECIAL CASE NO: 02-2001]
6 FEBRUARY 2002

CONSTITUTIONAL LAW: *Suit involving Regent of State - Jurisdiction - Whether plaintiff's suit against defendants should proceed in Special Court and not High Court upon plaintiff's appointment as Regent of Selangor - Interpretation of "Ruler" - Whether a Regent is a "Ruler" under arts. 160, 181, 182 and 183 of the Federal Constitution - Dato' Menteri Othman Baginda & Anor v. Dato' Ombi Syed Alwi Syed Idrus*

STATUTORY INTERPRETATION: *Construction of statutes - Interpretation of "Ruler" - Whether a Regent is a "Ruler" under arts. 160, 181, 182 and 183 of Federal Constitution - Dato' Menteri Othman Baginda & Anor v. Dato' Ombi Syed Alwi Syed Idrus*

The plaintiff filed this suit against the defendants in the High Court for the unpaid balance of the purchase price for the sale and purchase of certain shares by the defendants. The defendants filed a defence and counterclaim thereto. A reply and a defence to the counterclaim was also filed. Subsequently, the plaintiff was appointed the Regent of Selangor upon the appointment of the plaintiff's father to the throne as the 11th Yang di-Pertuan Agong. The High Court then referred the following issues to the Federal Court for determination under s. 84 of the Courts of Judicature Act 1964, *inter alia*, whether in light of his appointment thereof, the plaintiff came within the meaning of "Ruler" under arts. 160, 181(1), 182 and 183 of the Federal Constitution ('the Constitution'), and if so, whether the plaintiff's claim should be adjudicated in the Special Court to the exclusion of the High Court of Malaya.

Held:

Per Denis Ong JCA

[1] A "Ruler" belongs to royal ancestry and possesses four attributes, namely, sovereignty, prerogatives, powers and jurisdiction *(Dato' Menteri Othman Baginda & Anor v. Dato' Ombi Syed Alwi Syed Idrus*). In short, "Ruler" in art. 181(2) of the Constitution means Ruler in the full sense of that word, both functionally and status wise. The attribute that differentiates a "Ruler" from the Ruling Chief status wise is the attribute of sovereignty which a Ruling Chief lacks. That attribute which a Ruler possesses is the basis of immunity from proceedings in his personal capacity. (p 80 g-h)

[2] The amendment to art. 181(2) of the Constitution and the introduction of arts. 182 and 183 therein by Act A848 did not alter the construction or meaning of "Ruler" determined by the Federal Court in *Othman*'s case. The amendment to art. 181(2) alters the consequence by taking away the immunity of the Ruler from being sued or charged and stipulates that such proceedings shall be brought in the Special Court established by Pt. XV. (p 80 i)

[3] The Regent's appointment, based on the Selangor Gazette PU 19/99, was for the Sultan, and as the representative of the Sultan "and in accordance with the Laws of the Constitution to do, exercise and perform all acts, rights and duties failing to be done, exercised and performed by the Ruler of the State." Further, such appointment took effect from 24 April 1999 and for the duration that the Sultan was holding the office of Yang Di-Pertuan Agong. In such representative capacity, the Regent like the Sultan exercises the functions of the Sultan under the State Constitution or any State law in accordance with the advice of the State Executive Council or a member thereof which advice the Regent is bound to accept and act in accordance with (Constitution of the State of Selangor, art. 55(1) and (1A)). (p 81 e-g)

[4] In his official capacity, the Regent like the Sultan can be sued in name only, not in the Special Court but in the courts established under art. 121 of the Constitution. That is because the act of the Regent like that of the Sultan is deemed to be the act of the State Government. More appropriately, the State Government is the party to any such proceeding in those courts and not the Sultan or Regent. Therefore, "Ruler" defined in limb (b) of art. 160(2) means the Ruler (and likewise the Regent) acting not personally but on the advice of the State Government. (p 81 h-i)

[5] The agreements entered into between the plaintiff and the defendants and the plaintiff's suit against the defendants commenced well before the appointment of the plaintiff as Regent. It followed therefore that the agreements were entered into in his personal and not official capacity with the advice of the State Government. Therefore, there was no question of the application of art. 160(2) of the Constitution to the facts of this case. Otherwise, the agreements and the suit would have been in the name of the State Government of Selangor in accordance with the Government Contracts Act 1949. The institution of civil proceedings could only have been in the High Court. (p 82 a-c)

[6] Applying *Othman*'s case, the Regent is a "Ruler" of Selangor in the functional sense as regards performance of functions and power with effect from 24 April 1999 but not one before that date. Before 24 April 1999, the Sultan of Selangor was such a Ruler. Applying the construction and meaning of "Ruler" by Salleh Abas FJ in *Othman*'s case, the Regent is not a Ruler for the purposes of arts. 181(1), (2), 182 and 183 of the Constitution. "Ruler" in the context of those articles would properly have meant the Sultan of Selangor. (p 82 d-f)

[Order accordingly.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Plaintif telah memfailkan guaman ini terhadap defendan-defendan dalam Mahkamah Tinggi untuk baki tidak berbayar harga belian pembelian dan penjualan saham-saham tertentu oleh defendan-defendan. Defendan-defendan telah memfailkan pembelaan dan tuntutan balas terhadapnya. Satu jawapan dan tuntutan balas telah juga difailkan. Kemudiannya, plaintif telah dilantik sebagai Pemangku Raja Selangor setelah perlantikan ayahanda plaintif ke takhta sebagai Yang di-Pertuan Agong Ke-11. Mahkamah Tinggi kemudiannya merujuk isu-isu berikut kepada Mahkamah Persekutuan untuk penentuan di bawah s. 84 Akta Mahkamah Kehakiman Act 1964, antara lainnya, sama ada memandangkan perlantikan beliau tersebut, plaintif terlingkung di dalam maksud "Ruler" di bawah per. 160, 181(1), 182 dan 183 Perlembagaan Persekutuan ('Perlembagaan tersebut"), dan jika sedemikian, sama ada tuntutan plaintif haruslah dihakimi dalam Mahkamah Khas.

Diputuskan:
Oleh Denis Ong HMR

[1] Seseorang "Ruler" adalah dari keturunan raja dan mempunyai empat sifat, iaitu berdaulat, hak istimewa, kuasa dan bidangkuasa (*Dato' Menteri Othman Baginda & Anor v. Dato Ombi Syed Alwi Syed Idrus*). Secara ringkasnya, "Ruler" di dalam per. 181(2) Perlembagaan tersebut bermakna "Ruler" dalam ertikata yang sebenarnya, dari sisi fungsi dan kedudukan.

Sifat yang membezakan seseorang "Ruler" dari seorang "Ruling Chief" di sisi kedudukan adalah sifat berdaulat yang mana tidak dipunyai oleh seorang "Ruling Chief". Sifat itu yang dimiliki oleh seseorang "Ruler" adalah dasar kekebalan dari prosiding-prosiding dalam kedudukan peribadi beliau sendiri.

[2] Pindaan kepada per. 181(2) Perlembagaan tersebut dan pengenalan per. 182 dan 183 padanya oleh Akta A848 tidak mengubah pembentukan atau maksud "Ruler" yang ditetapkan oleh Mahkamah Persekutuan di dalam kes *Othman*. Pindaan kepada per. 181(2) mengubah akibatnya dengan membatalkan kekebalan "Ruler" daripada didakwa atau dituduh dan menetapkan bahawa prosiding-prosiding sedemikian akan dimulakan dalam Mahkamah Khas yang ditubuhkan oleh Bahagian XV.

[3] Perlantikan Pemangku Raja, berdasarkan Warta Selangor PU 19/99, adalah untuk Sultan, dan sebagai wakil Sultan "dan menurut Undang-Undang perlembagaan hendaklah melakukan, melaksanakan dan menjalankan kesemua tindakan, hak dan kewajipan yang gagal dilakukan, dilaksanakan dan dijalankan oleh Pemerintah Negeri." Selanjutnya, perlantikan yang sedemikian berkuatkuasa daripada 24 April 1999 dan bagi tempoh Sultan tersebut menyandang jawatan Yang Di-Pertuan Agong. Dalam memegang kedudukan sebagai wakil, Pemangku Raja seperti Sultan melaksanakan fungsi-fungsi Sultan di bawah Perlembagaan Negeri atau sebarang undang-undang Negeri menurut nasihat Majlis Mesyuarat Kerajaan Negeri atau seorang ahli daripadanya di mana Pemangku Raja terikat untuk menerima dan bertindak menurut nasihat tersebut (Perlembagaan Negeri Selangor, per. 55(1) dan (1A)).

[4] Dalam kedudukan rasminya, Pemangku Raja tersebut seperti juga Sultan boleh didakwa menurut nama sahaja, bukan dalam Mahkamah Khas tetapi dalam mahkamah-mahkamah yang ditubuhkan di bawah per. 121 Perlembagaan tersebut. Ini adalah kerana tindakan Pemangku Raja seperti juga Sultan dianggapkan sebagai tindakan Kerajaan Negeri. Lebih wajar lagi, Kerajaan Negeri adalah merupakan pihak kepada mana-mana prosiding yang sedemikian dalam mahkamah-mahkamah itu dan bukannya Sultan atau Pemangku Raja. Oleh itu, "Ruler" yang ditakrifkan dalam bahagian (b) per. 160(2) bermakna "Ruler" (dan begitu juga Pemangku Raja) yang bertindak bukan secara peribadi tetapi atas nasihat Kerajaan Negeri.

[5] Perjanjian-perjanjian yang dimasuki antara plaintif dan defendan-defendan dan guaman plaintif terhadap defendan-defendan bermula jauh sebelum perlantikan plaintif sebagai Pemangku Raja. Oleh itu perjanjian-perjanjian tersebut telah dimasuki dalam kedudukan peribadi beliau dan bukannya

atas kedudukan rasmi dengan nasihat Kerajaan Negeri. Oleh itu, tidak berbangkit persoalan pemakaian per. 160(2) Perlembagaan tersebut kepada fakta-fakta kes ini. Dalam keadaan lain, perjanjian-perjanjian tersebut dan guaman itu tentunya atas nama Kerajaan Negeri Selangor menurut Akta Kontrak Kerajaan 1949. Permulaan prosiding sivil hanya boleh dilakukan dalam Mahkamah Tinggi.

[6] Memakai kes *Othman*, Pemangku Raja adalah "Ruler" Selangor mengikut fungsi berhubung dengan perlaksanaan fungsi-fungsi dan kuasa yang berkuatkuasa daripada 24 April 1999 tetapi bukannya sebelum tarikh itu. Sebelum 24 April 1999, Sultan Selangor adalah seorang "Ruler" yang sedemikian. Memakai pembentukan dan makna "Ruler" oleh Salleh Abas HP di dalam kes *Othman*, Pemangku bukannya seorang "Ruler" bagi tujuan-tujuan per. 181(1), (2), 182 dan 183 Perlembagaan tersebut. "Ruler" menurut konteks perkara-perkara tersebut pastinya bermakna Sultan Selangor.

[Perintah sekadarnya.]

Case(s) referred to:

Dato' Menteri Othman Baginda & Anor v. Dato' Ombi Syed Alwi Syed Idrus [1984] 1 CLJ 28; [1984] 1 CLJ (Rep) 98 ***(foll)***

Faridah Begum Abdullah v. Sultan Hj Ahmad Shah Al Mustain Billah [1996] 2 CLJ 159 ***(refd)***

Stephen Kalong Ningkan v. Tun Abang Hj Openg & Tawi Sli [1967] 1 MLJ 46 ***(refd)***

Teh Cheng Poh v. PP [1979] 1 MLJ 50 ***(refd)***

Legislation referred to:

Constitution of the State of Selangor, art. 55(1), (1A)
Courts of Judicature Act 1964, ss. 84, 91
Federal Constitution, arts. 3, 34, 121, 160(1), (2)(b), 181(1), (2), 182(2), 183

For the appellant - Low Chi Cheng (Wong Yoke Peng); M/s Lim Kian Leong & Co
For the defendants - Bastian Vendargon (Philip Chai & Dhayana Shila); M/s Soo Thien Ming & Nashran

[Appeal from High Court, Kuala Lumpur; Suit No: D1-22-1350-1998]

Reported by Usha Thiagarajah

JUDGMENT

Denis Ong JCA:

This case comes before the Federal Court in the form of a special case referred by the High Court in Kuala Lumpur pursuant to s. 84 of the Courts of Judicature Act 1964 (Act 91) for our decision on four questions namely:

(1) whether the plaintiff, the Regent of the State of Selangor, who is appointed to exercise the functions as "Sultan" is a "Ruler" for the purposes of arts. 181, 182 and 183 of the Federal Constitution (as amended by Act A 848) having regard to the aforesaid provisions and the interpretation of "Ruler" as defined in art. 160 of Federal Constitution?

(2) if the answer to (1) is in the affirmative, does the Special Court have exclusive jurisdiction to adjudicate on the plaintiff's claim to the exclusion of the High Court of Malaya?

(3) if the answer to (1) or (2) above is in the affirmative does the Special Court have exclusive jurisdiction to adjudicate on the defendants' counterclaim to the exclusion of the High Court of Malaya (subject to the Attorney-General's consent pursuant to art. 183 of the Federal Constitution)?

(4) if the answer to (2) or (3) above is in the negative do the ordinary courts which are constituted under Part IX of the Federal Constitution have jurisdiction to adjudicate on the plaintiff's claim and the defendants' counterclaim?

We heard submissions on 22 October 2001 from both learned counsel Miss Low Chi Cheng for the appellant (the plaintiff) and Dato' Bastian Vendargon for the respondents (the defendants) and also queried Dato' Abdul Aziz b. Abdul Rahim senior federal counsel on certain points. He was present to hold a watching brief for the Attorney General (AG). The submissions were confined solely to question (1). At the conclusion of the hearing we unanimously answered it in the negative. I now give my reasons.

The facts agreed in the High Court between the parties to assist the Federal Court in deciding those questions which have arisen are as follows:

(1) on 6 May 1998, the plaintiff filed a writ of summons and statement of claim against both defendants in Suit No: D1-22-1350-1998 (the said Suit). The defendants filed a defence and counterclaim on 3 July 1998 which was subsequently amended by Court Order dated 7 January 1999. A reply and defence to the counterclaim was filed on 17 July 1998.

(2) on 24 April 1999 the plaintiff was appointed Regent of Selangor to exercise the functions as "Sultan" when His Highness's father, DYMM Sultan Salahuddin Abdul Aziz Shah Ibni Al-Marhum Sultan Hisamuddin Alam Shah was appointed to the throne as the 11th Yang Di-Pertuan Agong.

(3) on 27 July 1999, the plaintiff's solicitors, Messrs Lim Kian Leong & Co., wrote to the AG's Chambers to seek advice in respect of the further conduct of this matter. A response was received *vide* the letter dated 7 September 1999 from the AG's Chambers stating that in the light of His Highness's appointment as "Regent" further action is to be commenced in the Special Court and the consent of the AG will be required for the same. On 30 September 1999, the defendants' solicitors Messrs. Soo Thien Ming & Nashirah wrote to the AG's Chambers for consent that the defendants continue their counterclaim in the Special Court.

(4) on 13 October 2000, both parties were granted audience with YB Tan Sri Datuk Sri Peguam Negara and issues of jurisdiction, among others, were discussed.

(5) on 4 November 2000, the defendants through their solicitors wrote to the AG's Chambers expressing their reasons why the matter should continue in the High Court and not in the Special Court.

(6) on 15 November 2000, a letter was issued by the AG's Chambers indicating that this issue be determined by the High Court of Malaya.

(7) the defendants subsequently disagreed that the matter should proceed in the Special Court. The plaintiff filed two applications, one to withdraw the claim in the High Court with liberty to file afresh in the Special Court ("application to withdraw") and the other to strike out the defendants' counterclaim. On 2 April 2001, the application to withdraw was heard by the learned senior assistant registrar and on 4 April 2001, she allowed the plaintiff's application to withdraw with costs to be taxed ("the said Order"). Both parties lodged their appeals against the said Order.

(8) on 30 July 2001, the judge of the High Court by consent of the parties ordered that a reference be made to the Federal Court under s. 84 of Act 91 of the four questions.

(9) the application to strike out the counterclaim, the appeals by both parties against the said Order are pending and were stayed in the light of the reference.

(10) on 9 July 2001, the plaintiff filed their claim in the Special Court and the defendants entered conditional appearance on 19 July 2001.

(11) this matter was also stayed pending the reference to the Federal Court.

In respect of agreed fact (1), it is noteworthy from the statement of claim in the record of appeal that the cause of action was in contract based on an agreement in writing dd. 10 July 1995 (the SPA) entered into between the plaintiff as vendor and the 1st and 2nd defendants as purchasers for the sale and purchase of certain shares (allegedly identified in the SPA) for the purchase price of RM100 million. The claim of the plaintiff was for RM35 million being the unpaid balance of the purchase price and also for interest and cost. The amended counterclaim of the defendants was for RM25 million based on a supplemental agreement dd. 15 January 1996 (the S.A.). Neither the SPA nor the S.A. were included as part of the record of appeal.

In connection with agreed fact (2), it is noted that the appointment of the plaintiff as Regent was published in the Government of Selangor Gazette (Sel. P.U. 19/99) a copy of which was produced at the hearing before us by the senior federal counsel at my request. Such appointment took effect on 24 April 1999. The text in English of Sel. P.U. 19/99 so far as is relevant reads as follows:

> ... By the Grace of Allah, His Royal Highness SALAHUDDIN ABDUL AZIZ SHAH AL-HAJ IBNI ALMARHUM SULTAN HISAMUDDIN ALAM SHAH AL-HAJ, ... OF THE STATE OF SELANGOR AND ALL ITS DEPENDENCIES, SULTAN AND RULER:
>
> WHEREAS by Article XXI of the First Part of the Laws of the Constitution of Selangor, 1959, it is provided, *inter alia*, that if His Royal Highness the Sultan is selected to the office or exercises the functions of the Yang di-Pertuan Agong. He shall appoint a Regent or ... to exercise His functions as Sultan:
>
> AND WHEREAS the Conference of Rulers at its 182nd Meeting on 26th day of February 1999 ... has elected His Royal Highness the Sultan to be the 11th Yang di-Pertuan Agong:
>
> AND WHEREAS His Royal Highness the Sultan will be holding the office of Yang di-Pertuan Agong commencing on 26th day of April 1999:
>
> NOW, THEREFORE, in accordance with the provisions of Article XXI of ... 1959, His Royal Highness the Sultan has been graciously pleased to appoint DULI YANG TERAMAT MULIA TENGKU IDRIS SHAH IBNI SULTAN SALAHUDDIN ABDUL AZIZ SHAH AL-HAJ ... RAJA MUDA SELANGOR, to be REGENT during the period that His Royal Highness the Sultan is holding the office of Yang di-Pertuan Agong, for HIM as His representative and in accordance with the Laws of the Constitution to do, exercise and perform all acts, rights and duties falling to be done, exercised and performed by the Ruler of the State.

GIVEN at Istana Alam Shah, Klang this 24th day of April 1999 ...

By His Royal Highness's Command.

DATO SERI (DR). HAJI ABU HASSAN BIN HAJI OMAR,
Menteri Besar,
Selangor.

On agreed fact (3) the plaintiff's solicitors queried (1) whether the said suit should properly be brought in or be transferred to the Special Court as provided under art. 182(2) of the Federal Constitution; and, (2) whether the consent of the AG under art. 183 must be obtained by the defendants before making a counterclaim against the plaintiff. The basis for such queries was that in the light of his appointment as Regent the plaintiff was, to all intents the "Ruler". These queries were addressed by letter dd. 27 July 1999 to the AG's Chambers by the plaintiff's solicitors and copied to the solicitors for the defendants. Without copying to the latter, the AG's advice dd. 7 September 1999 to the former on both queries was in the affirmative. Having been informed by the plaintiff's solicitors of such advice the defendants' solicitors requested the AG in writing dd. 30 September 1999 for the requisite consent. The AG's reply dd. "18 September 1999" was received by the defendants' solicitors on 24 November 1999. Here, it is observed that the date "18 September 1999" was obviously mistaken having regard to para. 2 of that reply which specifically referred to the letter dd. 30 September 1999. The reply must have been made at any time between 30 September 1999 and 24 November 1999. In any event the consent in writing was not forthcoming in the reply; instead, the defendants' solicitors were informed that under art. 183 it should have been obtained before (and not after) the counterclaim was made and suggested a meeting of the parties with the AG. The purpose of bringing these out is to give a fuller picture of what is comprehended by agreed fact (3).

On agreed fact (5) the solicitors' letter recalled that the AG informed at that meeting that since the plaintiff was then performing duties as "Regent" the said suit should appropriately be tried in the Special Court in accordance with the Federal Constitution and advised both solicitors present to take appropriate action. By that letter the defendants' solicitors openly stated the defendants' disagreement with such advice for the following reasons:

(a) at the time the claim and counterclaim was filed, the plaintiff was not yet a Regent. Thus he was within the jurisdiction of the High Court.

(b) Though performing the duties and functions of a Regent, on 4 November 2000, he was not a "Ruler" for the purpose of art. 181(2). The judgment of Salleh Abas FJ (as he then was) in *Dato' Menteri Othman bin Baginda & Anor v. Dato Ombi Syed AIwi bin Syed Idrus* [1984] 1 CLJ 28; [1984] 1 CLJ (Rep) 98 was cited as authority for this point.

The purpose of bringing these out was to indicate the views expressed by the AG at the meeting referred to in agreed fact (4) and also the reasons expressed by the defendants' solicitors for their disagreement therewith.

On question (1) of this reference, Miss Low makes the following points namely:

(a) that the definition of "Ruler" in art. 160(1) is a wider definition in the sense that it refers to both the incumbent Ruler and the Regent appointed to exercise the functions as Sultan.

(b) The only instances where such wider definition is excluded from application are those specifically mentioned in limb (b) of that definition, that is to say, art. 181(2), the 3rd Schedule and the 5th Schedule to the Federal Constitution. Consequently, that definition does not apply to "Ruler" in art. 181(2).

(c) Since limb (b) is silent on arts. 181(1), 182 and 183 she says that the wider definition applies to them. So applied she contends that the plaintiff a Regent exercising the functions as Sultan is a "Ruler" for the purposes of arts. 181(1), 182 and 183 but not a "Ruler" for the purpose of art. 181(2) of the Federal Constitution.

In the premises she submits that the answer to question (1) should be in the affirmative.

Dato' Vendargon observes that:

(a) the definition of "Ruler" in art. 160(2) is retained without amendment introduced by Act A848;

(b) Article 181(2) has been amended by Act A848 to include the words "except in the Special Court established under Part XV"; and

(c) Article 182(2) has been included by Act A848 and provides for "Any proceedings by or against ... .

He says that ambiguities arise from a reading of these provisions: firstly, a Regent exercising the functions of a Sultan is not a "Ruler" for the purposes of art. 181(2) and thus can be sued in the ordinary courts, however, for purposes of art. 182(2) he is a "Ruler: and shall sue or be sued in the Special Court; secondly, if one wishes to sue the Regent, which provision will prevail – art. 181(2) read with the definition of "Ruler" in art. 160(2), or art. 182(2) and art. 183?

He submits that the literal interpretation ought not to be used as it would lead to undesirable conclusions or absurdities in that:

(i) proceedings by the Regent shall be instituted in the Special Court under art. 182(2) whilst proceedings against the Regent may be instituted in the ordinary courts as the Regent is not a "Ruler" for the purposes of art. 181(2). Accordingly, the determination of the claim in the present case would fall within the jurisdiction of the Special Court whilst the determination of the counterclaim which is founded on the same facts as the claim would fall within the jurisdiction of the High Court. He queries what if two different decisions are reached on the same facts that arise from the same transaction.

(ii) The Regent does not require the consent of the AG to institute an action but the defendants may require such consent. On this point he drew attention to art. 183 compared with art. 181(2).

(iii) The Regent may cease to exercise the function of the Ruler when his father resumes the role. In that event he queries whether his claim should then be transferred from the Special Court to the ordinary courts.

Instead he submits that the mischief rule/purposive interpretation ought to be used to interpret the relevant provisions of the Federal Constitution in answering Question (1) of the reference for the following reasons:

(1) that the mischief that Parliament sought to rectify by Act A848 was to take away the immunity of the Rulers from legal proceedings and to establish the Special Court to deal with all matters by and against the Rulers.

(2) that it was never the intention of Parliament to extend the immunity of the Regents or persons exercising the functions of the Ruler who never enjoyed immunity from legal proceedings under the original provisions of the Federal Constitution in the first place.

(3) that the purpose of Parliament was never to grant the privileges of the Special Court procedure to the Regent or persons exercising the functions of the Ruler who never enjoyed the immunity under the original provisions of the Federal Constitution.

(4) that the purpose of the qualification in the definition of "Ruler" in art. 160 was to ensure that immunity from legal proceedings was never to be extended to Regents exercising the functions of the Rulers.

In the premises he submits that the answer to Question (1) ought to be in the negative.

Learned senior federal counsel draws attention to art. 3 and art. 34 of the Federal Constitution and expresses the view that question (1) should be answered in the negative.

There is common ground between the parties on a point of law namely, that the definition of "Ruler" in art. 160(2) does not apply to art. 181(2). The query raised by point (c) of Miss Low's submission is, does that definition apply to art. 181(1). She says it does. Dato' Vendargon however, is silent on this point. Whether that definition applies to art. 181(1) or (2) is a point of construction which has been canvassed by the Federal Court in *Othman*'s case in the judgment of Salleh Abas FJ. He construes that the definition of "Ruler" in art. 160(2) is inapplicable for the purpose of interpreting "Ruler" in art 181 be it cl. (1) or (2) because the context of art. 181 requires otherwise and that definition is a functional one which has no bearing on the personal status of the Ruler at all. That construction is shared by Suffian LP (as he then was) and Hashim Yeop A. Sani J (as he then was) in separate judgments delivered in the same case. Consequently, in *Othman*'s case, on the issue of law ie, whether a Ruling Chief, an Undang, is a Ruler, Salleh Abas FJ decided that a Ruling Chief is a Ruler as regards performance of functions and power but not a Ruler for the purpose of judicial immunity under art. 181(2). Hashim Yeop A. Sani J supports that decision. There seems to be implicit approval by Suffian LP when he expresses the view that he is doubtful that art. 181 gives the Ruling Chief legal immunity at all although he makes it clear that he is undecided on that point but is prepared to assume for the purpose of that appeal that the Ruling Chief enjoys legal immunity in his personal capacity to the extent that he is sovereign.

The question then is who is "Ruler" in the context of art. 181(2). According to Salleh Abas FJ in *Othman*'s case art. 181(1) provides the answer to art. 181(2) that is to say, he belongs to a royal ancestry and possesses the four attributes namely, sovereignty, prerogatives, powers and jurisdiction. In short, "Ruler" in art. 181(2) means Ruler in the full sense of that word, both functionally and status wise. The attribute which differentiates a Ruler from the Ruling Chief status wise is the attribute of sovereignty which a Ruling Chief lacks. That attribute which a Ruler possesses is the basis of immunity from proceedings in his personal capacity.

The query here is whether the construction of law by Salleh Abas FJ still stands in the light of the amendments to the Federal Constitution effected by Act A848. Act A848 makes no amendment to the definition of "Ruler" in art. 160(2) or art. 181(1). They remain intact. Thus there is no reason to depart

from his construction and in my view his construction still holds good. Act A848 amends art. 181(2) by inserting the words "except in the Special Court established under Part XV" after "capacity". Article 181(2) in its unamended form does not define a Ruler but deals rather with the consequence of one being a Ruler namely, immunity from proceedings in any court in his personal capacity: (see *Othman*'s case). As I see it, the amendment to art. 181(2) and for that matter the introduction of arts. 182 and 183 into the Federal Constitution by Act A 848 in no way alters the construction or meaning of "Ruler" determined by the Federal Court in *Othman*'s case which should apply to them uniformly as well. The amendment to art. 181(2) alters the consequence by taking away the immunity of the Ruler from being sued or charged and stipulates that such proceedings shall only be brought in the Special Court established under Part XV: see *Faridah Begum bte Abdullah v. Sultan Haji Ahmad Shah Al Mustain Billah* [1996] 2 CLJ 159 (Special Court) per Eusoff Chin CJ.

The question in our present case is whether the plaintiff a Regent, appointed to exercise the functions as Sultan, is a "Ruler" for the purpose of art. 181(2). Bearing in mind that "Ruler" in art. 181(2) means Ruler in the full sense of that word that question entails a consideration of the Regent in his official and personal capacities.

His appointment as is clear from the operative part of Sel. P.U. 19/99 is for the Sultan and as the representative of the Sultan "and in accordance with the Laws of the Constitution to do, exercise and perform all acts, rights and duties falling to be done, exercised and performed by the Ruler of the State." Further, such appointment takes effect from 24 April 1999 and for the duration that the Sultan is holding the office of Yang Di-Pertuan Agong. In such representative capacity the Regent, like the Sultan exercises the functions of the Sultan under the State Constitution or any State Law in accordance with and on the advice of the State Executive Council (the Majlis Mesyuarat Kerajaan Negeri) or a member thereof, which advice the Regent is bound to accept and act in accordance therewith: See art. 55(1) and (1A) of the Constitution of the State of Selangor. In his official capacity the Regent like the Sultan can be sued in name only, not in the Special Court, but in the courts established under art. 121 of the Federal Constitution as the act of the Regent like that of the Sultan is deemed to be the act of the State Government. More appropriately, the State Government is the party to any such proceeding in those courts and not the Sultan or Regent: see *Othman*'s case per Salleh Abas FJ. See also *Stephen Kalong Ningkan v. Tun Abang Hj. Openg & Tawi Sli* [1967] 1 MLJ 46 (HC) and *Teh Cheng Poh v. PP* [1979] 1 MLJ 50 (PC) at p. 52 left column C-F. It will thus be seen that "Ruler" in the sense defined in limb (b) of art. 160(2) really means the Ruler (and likewise the Regent) acting not personally but on the advice of the MMKN that is, the State Government.

It is a fact agreed between the parties that the SPA and the SA were entered into and the said suit commenced well before the appointment of the plaintiff as Regent, a reason expressly stated by the solicitors for the defendants for disagreeing with the views of the AG. It follows from this that they were entered into or commenced in his personal and not in his official capacity acting in accordance with or on the advice of the MMKN of Selangor or a member thereof. Thus, there is no question of the application of art. 160(2) to the facts of this case. Otherwise, the SPA or the SA and the said suit would all have been in the name of the State Government of Selangor in accordance with the Government Contracts Act 1949 (Act 120) and the institution of civil proceedings could only have been in the High Court, taking into account the value of the subject matter, and governed by the Government Proceedings Act 1956 (Act 359).

Applying the construction of Salleh Abas FJ in *Othman*'s case, the Regent is in my view a "Ruler" of Selangor in the functional sense as regards performance of functions and power with effect from 24 April 1999 but not one before that date. Before 24 April 1999 the Sultan of Selangor was such a Ruler.

It is a fact that the plaintiff belongs to a royal ancestry. He is a Tengku and Raja Muda of Selangor and that status remains with him during his regency. Status wise, he is not on an equal footing with his father who is both the Sultan of Selangor and the 11th Yang Di Pertuan Agong.

As the reigning Sultan of Selangor he possesses the attribute of sovereignty and not the Regent.

Thus applying the construction and meaning of "Ruler" by Salleh Abas FJ in *Othman*'s case the Regent is not a Ruler for the purposes of art. 181 be it cls. (1) or (2), art. 182 and art. 183. "Ruler" in the context of those articles would properly have meant the Sultan of Selangor.

For all these reasons stated, I answered question (1) of this reference in the negative.